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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 667

JOHN CARLSON,

Appellant,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA.

APPEAL FROM THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF SHASTA.

MOTION FOR LEAVE TO FILE STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS AND STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS.

LAURENCE W. CARR,
District Attorney of Shasta County,
Counsel for Appellee.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 667

JOHN CARLSON,

Appellant,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA,

Appellee.

APPLICATION FOR SPECIAL PERMISSION TO FILE NOTICE OF MOTION, MOTION TO DISMISS APPEAL, AND BRIEF OF APPELLEE IN OPPOSITION TO APPELLANT'S PETITION FOR APPEAL AND STATEMENT AS TO JURISDICTION.

To the Honorable Supreme Court of the United States:

STATE OF CALIFORNIA,
County of Shasta, ss:

LAURENCE W. CARR, being duly sworn, deposes and says: That he is a citizen of the United States, over the age of twenty-one years, and that:

Applicant hereby applies for and prays that this Honorable Court may grant special permission to the said applicant to file with this Honorable Court "Notice of Motion, Motion to Dismiss Appeal, and Brief of Appellee in Opposition to Appellant's Petition for Appeal and Statement as to Jurisdiction" in the above entitled action. The said "Notice of Motion, Motion to Dismiss Appeal, and Brief of Appellee in Opposition to Appellant's Petition for Appeal and Statement as to Jurisdiction" has been heretofore

mailed to the Clerk of this Honorable Court. Because the said document was due on the 23rd day of January, 1940, and sufficient time was not available to the applicant to prepare and mail the within application with the said document, it may now appear that the applicant seeks to circumvent the rules of this Court.

The within application is therefore filed in order to make clear that the applicant herein has full regard for the rules and high standards of admission required for admission to practice before this Court, and to preclude any possibility of the applicant being adjudged in contempt for any wilful violation of the rules.

This application is necessitated, however, by unusual circumstances. Applicant is not a member of the Bar of this Court and has not been admitted to the highest court of any American Jurisdiction for a length of time sufficient to make him eligible for admission to said Bar. Applicant is the duly elected and qualified District Attorney of the County of Shasta, State of California. As such, applicant has been advised by the Attorney General of California that the matter of enforcing and sustaining county ordinances is purely a county matter and the officer charged with the duty of so doing is the District Attorney of said county. The laws of California preclude the District Attorney or the county from hiring special counsel to prosecute criminal cases.

Gibson v. *County of Sacramento*, 37 Cal. App. 523 at 531;
Conklin v. *Woody*, 33 Cal. App. 165 P. 973;
County of Modoc v. *Spencer*, 103 Cal. 498 37 P. 483.

The above entitled action is a criminal prosecution, for a violation of a county ordinance of said County of Shasta. It is, therefore, incumbent upon the applicant to represent the State. It appears then that the only other way in

which the State may be allowed to file the document heretofore mentioned would be to secure the services of some interested member of the Bar of this Court, without compensation. An effort has been made to do so. The two members of the Bar contacted by the applicant, were unwilling to take sides against the labor organization, of which the defendant was a member, as a gratuitous undertaking. It appears that it would be difficult to secure the gratuitous service of any member of the Bar of this Court, except, perhaps, a partisan, opposed to said labor organization. Applicant feels that to allow the injection of any partisanship into a criminal prosecution would be a dereliction of duty.

In accordance with Rule 2, Subdivision 2, of the revised rules of the Supreme Court of the United States, of February 27, 1939, the applicant herein, with the exception of requirement (1) sets forth the information required of regular applicants for admission to the Bar of this Honorable Court and certifies that:

(1) He was born at Redding, California, on the 12th day of June, 1912.

(2) His father's name is Francis Carr, and his mother's name is Mary A. Carr, both of Redding, California.

(3) He resides at 2005 Court Street in the City of Redding, State of California, and has his offices in the Shasta County Court House, in the said City of Redding.

(4) He was admitted to the United States Court of Appeals of the District of Columbia on the 7th day of June, 1937, having been admitted to the District Court of the District of Columbia on the 13th day of October, 1936. He was admitted to the Supreme Court of California on the 9th day of November, 1937.

(5) He held himself out as a practitioner of the law in the City of Washington, District of Columbia, from his

place of residence from the 13th day of October, 1936 to the 15th day of June, 1937.

(6) He has, since his admission to the Bar of this State of California on the 9th day of November, 1937, engaged in the practice of the law in the City of Redding, State of California.

(7) He has never been reprimanded by any court concerning his conduct or fitness as a member of the Bar.

(8) He has taken steps to have forwarded to this Court, two signed statements of members of the Bar of this Court, not related to him, and who are resident practitioners within the State of California.

A certified copy of the Certificate of Election and Oath of Office of the said applicant as District Attorney of Shasta County, is attached hereto and made a part hereof, and marked, "Exhibit 1".

Applicant is cognizant of the extraordinary nature of the request made herein. However, applicant feels that in view of the foregoing, it is his solemn duty, as the representative of the People of the sovereign State of California, and the sole officer thereof, charged with the duty of upholding of the law in question; that an emergency exists sufficient to warrant the granting of the special permission requested as the denial thereof, will deny the People of the sovereign State of California any official representation before this Court in the above entitled matter.

LAURENCE W. CARR,
District Attorney Shasta County,
State of California.

Subscribed and sworn to before me this 22nd day of January, 1940.

EVELYN L. SPANN,
[SEAL.] *Notary Public in and for the County*
of Shasta, State of California.

EXHIBIT 1.

Certificate of Election.

UNITED STATES OF AMERICA.

STATE OF CALIFORNIA,
County of Shasta, ss:

I, ERROL A. YANK, County Clerk in and for the County of Shasta in the State of California, do hereby certify, that at a August Primary Election held in and for said County on the 30th day of August, 1938, Laurence W. Carr was elected to the office of District Attorney as appears by the official returns of said election, and the statement of votes cast now on file in my office.

In Witness Whereof, I have hereunto affixed my hand and seal this 13th day of Sept. 1938.

ERROL A. YANK,
Clerk.

STATE OF CALIFORNIA,
County of Shasta, ss:

I do solemnly swear that I will support the constitution of the United States and the constitution of the State of California, and that I will faithfully discharge the duties of the office of District Attorney according to the best of my ability.

LAURENCE W. CARR.

Subscribed and sworn to before me, this 6th day of Oct. 1938.

ERROL A. YANK,
Clerk,
By RUTH A. PRESLEIGH,
Deputy Clerk.

The foregoing instrument is a correct copy of the original on file in this office.

Attest: Jan. 22, 1940.

Ruth A. Presleigh, County Clerk and ex-officio Clerk of the Superior Court of the State of California in and for the County of Shasta.

By VIRGINIA ORSINI,
Deputy.

(Endorsed:) Filed Oct. 6, 1938. Errol A. Yank, Clerk. By Ruth A. Presleigh, Deputy Clerk. Seal.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 667

JOHN CARLSON,

Appellant;

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA,

Appellee.

BRIEF OF APPELLEE IN OPPOSITION TO APPELLANT'S PETITION FOR APPEAL AND STATEMENT AS TO JURISDICTION.

I.

Question.

The question presented by the appeal in this case is whether a municipal ordinance which prevents peaceful picketing and the carrying of signs and banners

1. In public places, and
2. At or near the scene of a labor controversy
3. For the purpose of either:
   a. Dissuading others from entering there to work, or,
   b. Boycotting the sale of disputed goods, is repugnant to the 14th Amendment to the Constitution of the United States in abridging freedom of speech or of the press, right peaceably to assembly, or denies Appellant the equal protection of the laws or of liberty without due process of law.

II.

Statement of the Case.

Appellant was convicted of violating an ordinance of the County of Shasta preventing peaceful picketing. He was one of twenty-nine (29) C. I. O. pickets, picketing on the right of way of a main public highway, known as U. S. Highway No. 99 in the County of Shasta, State of California (Rep. Tr. Pages 4 and 5). Defendant was carrying a banner (Rep. Tr. Page 29 Ex. B-4) on which was inscribed "This job unfair to C. I. O." Other members of the group were also carrying signs and banners containing such inscriptions as "Don't be a scab" (Ex. B-1) "Shasta Tunnel and Construction Worker's Local 260" (Ex. B-2) and "C. I. O. Picket Line" (Ex. B-3). The picketing took place at the site of a tunnel project being constructed in close proximity to the highway (Rep. Tr. Pages 4 and 5). At that time, there was a dispute over jurisdiction of the tunnel job between the A. F. of L. and the C. I. O. (Rep. Tr. Pages 18 and 19). Work was going on at the tunnel project and workers were passing through the picket lines (Rep. Tr. Page 11). The signs were carried in such a manner that they were being shown to the A. F. of L. workers on the job (Rep. Tr. Page 8). The record shows that for sometime the dispute had gone on over jurisdiction, and at one time it even became necessary to shut the job down until the controversy could be settled.

III.

Analysis of Ordinance.

A certified copy of the ordinance is made part of the record in this case. The ordinance prevents all picketing,

peaceful or otherwise, with or without signs and banners, under the following conditions:

1. Where it is done in a public place,
2. At or near the scene of a labor controversy,
3. For the purpose of either:
   a. Dissuading others from entering there to work, or
   b. Boycotting the sale of disputed goods.

The ordinance does not preclude:

1. Picketing in private places, off public streets or squares, such as at a factory or place of employment, where a walk-out or strike may be in progress.

2. On public streets or squares, or in other public places, for any purpose, away from the scene of a labor controversy, or where it is not done "in front of or in the vicinity of" a place housing the subject of controversy where it is believed friction may arise.

3. The passing out of literature of all kinds, concerning the labor dispute on the streets or in other public places, or even at the place of a dispute where the ordinance prevents picketing.

4. Parades, where all manner of signs and banners are carried and other means of communication used.

5. Picketing in front of or in the vicinity of the scene of a labor controversy, if it is solely for the purpose of making known the position of the picket or the organization he represents, and not for one of the two purposes set out in the ordinance.

6. Printing or otherwise advertising views in the newspapers.

7. Hiring of halls or speaking on the radio.

8. Holding of public mass meetings in all public places, so long as it is not "in front of or in the vicinity of" the scene of a labor controversy *and* for one of the two purposes set out in the statute. (Thus, if the defendant had not admitted and it had not been shown that he was doing the acts charged for the purpose of "inducing and influencing persons to refrain from doing and performing services and labor at said Delta Tunnel Project", even the picketing that defendant was doing would not have been unlawful.)

Upon further analysis, it will be seen that this ordinance in no way attempts even to regulate or license *what* may be said, but, in the interest of the public peace, only regulates the *method* and *means* by which it is said.

IV.

Argument.

1. The State Legislature, or Legislative Bodies Vested with Authority Thereof, May, in Exercise of Police Power, Place Reasonable Regulations and Restrictions upon Specific Constitutional Guarantees in the Interest of the Public Peace.

Gitlow v. *New York*, 268 U. S. 652, 45 Sup. Ct. 625, 69 L. Ed. 1138.

2. Every Intendment Should be Resolved in Favor of Constitutionality.

It is incumbent upon opponents of a law to demonstrate that the law clearly is unreasonable, arbitrary and capricious. In the absence of such an affirmative showing, this Court will not superimpose its judgment as to the policy of a statute on that of the legislative authority.

Arizona Copper Co. v. *Hammer*, 250 U. S. 400, 63 L. Ed. 1058;
Great Northern v. *Minnesota*, 246 U. S. 434, 62 L. Ed. 817;
Gitlow v. *New York*; *supra*.

3. As to this Statute there is not only no Affiramtive Showing of Unreasonableness but on the Other Hand this Ordinance has Reasonable Basis.

(1) Some of us may believe that the prevention of peaceful picketing under the conditions set forth in the ordinance is an unwise policy, but unless the legislative body acted arbitrarily and abused its discretion in laying it down, this Court will not pass judgment upon the policy.

Certainly no legislature may abrogate entirely freedom of speech. However, there is no constitutional guarantee of the right to picket. Nevertheless, let us assume that the legislature took away the right to picket entirely.

It has been said by the Supreme Court of California that picketing in its very nature tends to violence.

Pierce v. *Stable Men's Union*, 156 Cal. 70 at p. 79;
Rosenberg v. *Retail Clerks Assn.*, 39 Cal. App. 67 at p. 70.

Such a belief, it might be argued, is wrong, but we know from our knowledge and experience it would be difficult to say that it was unreasonable. As the Court said in *Thomas* v. *City of Indianapolis*, 195 Ind. 440, 145 Northeastern 550 at p. 553, quoting from the case of *Hardy-Tynes Mfg. Co.* v. *Cruse*, 189 Ala. 66, 66 Southern 667, both of which cases sustained ordinances preventing peaceful picketing against all of the constitutional objections raised in the instant case:

> "perhaps our legislature has taken the view adopted by some of the courts, that in actual practice, there is and can be no such thing as peaceful picketing or peaceful persuasion. Certainly this is the effect of our statutes."

In this case, however, there is not only no *abrogation* of the right of freedom of speech or press or of the constitutional guarantees alleged to be taken away, but there is not even an *abrogation* of the right to *picket*. It is only made unlawful under certain conditions, where it may reasonably be likely to engender hostility and thus tend to breaches of the peace. The right to picket in any of the ways heretofore set forth in this memorandum under Number III, is preserved.

4. Appellant's Authorities Distinguished.

Principal cases decided by this Court and cited by Appellant in support of the alleged unconstitutionality are:

a. *Schneider* v. *Irvington* (4 handbill cases), 84 L. Ed. Adv. Op. 115;

Lovell v. *Griffin*, 303 U. S. 444, L. Ed.

These cases involve the right of a state or municipality to subject the circulation of handbills, a method of exercise of free speech and press which is rooted in the oldest of American traditions and considered a fundamental right, to licensing. They were held unreasonable in each instance because the determination of *what* might be said and of dissemination of information generally was placed in the hands of individual officers tending to allow censorship of the contents of all handbills.

(1) One ground of decision in these cases was that the citizen is entitled to be protected from being told *what* he may and may not say. The contents and nature of the publication could be regulated with discrimination.

The Anti-Picketing Ordinance, on the other hand, still allows absolute freedom as to *what* information may be disseminated, but under certain limited conditions regulates the *manner* in which it may be disseminated, because the legislative authority reasonably believes that the particular *mode* prevented tends to endanger the public peace.

(2) The other ground of decision in these cases was that they forbid unlicensed communications in streets and public places *at all*.

As shown under "III. Analysis of Ordinance", picketing is still allowed without the requirement of a license therefor in innumerable instances, and is only regulated under certain limited conditions.

b. *Hague* v. *C. I. O.*, 306 U. S. 624, 84 L. Ed. 1423.

The ordinance in the *Hague* case also provided for licensing. It prohibits all unlicensed meetings and circulation of leaflets, thus allowing arbitrary discrimination in determining *who* may meet in public places and *what* may be circulated.

There is no denial of equal protection, as in the above cases, in the ordinance in question. It does not confer any dictatorial authority on any officer which may be arbitrarily and capriciously exercised. The classification is reasonable and sound. It only prohibits picketing in a public place near the scene of a labor controversy and for purposes which may cause friction.

c. *Herndon* v. *Lowry*, 301 U. S. 242, 81 L. Ed. 1066;
DeJonge v. *Oregon*, 299 U. S. 355, 81 L. Ed. 278.

These cases involve insurrection statute and a criminal sedition law, which again regulated *what* might be said, with no reasonable police power objective apparently served. In this case, a proper police power objective, namely preservation of the public peace, is being promoted. It is a matter of common knowledge that violence frequently results from any kind of controversy at the scene of a labor dispute, because of the tension engendered by the partisanship of the parties in the controversy, and, thus, to say that the legislature was being arbitrary in believing that this limited regulation would be reasonably calculated to protect the

public peace, would be a far-reaching interference with the broad legislative discretion so jealously guarded throughout the history of this Honorable Court.

d. *Grosjean* v. *American Press Co.*, 297 U. S. 233, 80 L. Ed. 660.

The statute in this case was held to abridge the freedom of press because, in view of the legislative purpose sought to be attained, namely, the raising of revenue, the regulation was considered as not reasonably calculated to serve that objective. No sound basis for restricting the circulation of large newspapers and thus hampering the free dissemination of information was shown, as previously stated. It cannot be affirmatively shown that it was unreasonable to believe that the object sought after by the ordinance in the instant case could be accomplished by the particular mode adopted.

e. *Crandall* v. *Nevada*, 73 U. S. 35, 18 L. Ed. 745.

This case is not in point. It was a case involving the passage from one state to another and interference with the Federal Authorities over interstate commerce. There is no such question involved here.

f. *Senn* v. *Tile Layers Union*, 301 U. S. 468, 81 L. Ed. 1229.

(1) This is a case which approves the exercise of legislative discretion. It holds that if the legislature reasonably believes that it is a wise public policy to make peaceful picketing lawful and to prevent injunctions against it, that, whether the policy is wise or unwise in the opinion of the Court, that is a matter for the legislature and it may do so in the exercise of its police power.

Counsel for Appellant upholds this legislative discretion with great enthusiasm where he approves of the policy, but he is not willing to give the legislature the same discretion where it adopts a policy of which he disapproves.

The decisions of this Honorable Court have consistently held that the issue in these cases is not one of *policy* but of *power*. The very fact that the issue raised by this case merited the full consideration of this Honorable Court and that it was called upon to determine whether the granting of this right unhampered was an unreasonable and arbitrary policy, is strong ground for holding that the regulation of this right by another legislative body is not arbitrary and capricious.

(2) The holding in this case clearly states the principle on which this Court should sustain the constitutionality of the ordinance in question. Quoting from 81 L. Ed. at page 1236:

> "Members of a union might, without special statutory authorization by a State, make known the facts of a labor dispute, for freedom of speech is guaranteed by the Federal Constitution. The State, may, in the exercise of its police power regulate the *methods* and *means* of publicity *as well as the public streets.*"

Service of the foregoing Notice of Motion, Motion to Dismiss Appeal, and Brief of Appellee in Opposition to Appellant's Petition for Appeal and Statement as to Jurisdiction is hereby admitted this 20th day of January, 1940.

GLADSTEIN, GROSSMAN AND MARGOLIS,
By RICHARD GLADSTEIN,
Attorneys for Appellant.

SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1939

No. 667

JOHN CARLSON, *Appellant,*

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA, *Appellee.*

MOTION TO DISMISS APPEAL FROM THE JUDGMENT OF THE SUPERIOR COURT OF THE COUNTY OF SHASTA.

Come now the People of the State of California, by their attorney, appearing in that behalf, and move this Honorable Court that it shall dismiss the appeal prayed for by Appellant from the Superior Court of Shasta County, on the ground that it is not shown sufficiently that this Court has jurisdiction because Appellant has not established any abuse of legislative discretion sufficient to bring the statute in question into conflict with any provisions of the Constitution of the United States. Appellee tenders herewith its brief containing a statement of the grounds on which the appeal is proposed, and in support of the motion to dismiss.

Dated: This 22nd day of January, 1940.

LAURENCE W. CARR,
District Attorney
Shasta County, State of California,
LAURENCE W. CARR,
Attorney for Appellee.